



**COMMONWEALTH OF MASSACHUSETTS**  
**Board of Registration**  
**of**  
**Hazardous Waste Site Cleanup**  
**Professionals**

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**PROFESSIONAL CONDUCT COMMITTEE**  
**Minutes of Meeting on May 15, 2012**  
[Approved on July 27, 2012]

**Prepared by:** Terry Wood

**Meeting Location:** MassDEP Headquarters, Boston, MA

**List of Documents Used at the Meeting:**

1. Agenda
  2. Draft Minutes of Meeting on March 27, 2012
  3. Active Case List
  4. Copy of a Recent Superior Court Decision Upholding the Board's Final Order in Case 99C-11/00C-14
  5. Data Tables and Site Figures re: Complaint 11C-03
  6. Complaint 11C-04 and LSP Response
  7. Complaint 12C-01 and LSP Response
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1. **Call to Order:** Robert Luhrs called the meeting to order at 1:12 p.m. Also present were Gail Batchelder, Elizabeth Callahan, Deborah Farnsworth, Kirk Franklin, John Guswa, Christophe Henry, Debra Listernick, Kelley Race and Farooq Siddique. Board members absent: none. Staff members present were Beverly Coles-Roby, Terry Wood, Lynn Read, and Allen Wyman. Also present were Wendy Rundle, LSP Association Executive Director, and Wes Stimpson, also of the LSPA.
  2. **Announcements:** There were no announcements.
  3. **Previous Minutes:** The draft minutes of the meeting held on March 15, 2012, were approved with one minor edit.

#### **4. Old Business**

##### **A. Status of CRTS**

At Mr. Luhrs's request, each CRT reported on progress made since the March meeting.

Ms. Read stated that she had just received a copy of a decision issued by the Massachusetts Superior Court affirming the Board's Final Order in case 99C-11/00C-14. The LSP in the case had appealed the Board's Final Order to Superior Court. She passed out copies of the Superior Court decision. The Committee members discussed whether to publicize the recent Superior Court decision on the Board's Web site. After some discussion, the consensus of the Committee was to direct the staff to wait until the period for the LSP to appeal the Superior Court decision has run, and, if the LSP does not appeal, to draft a press release and an article for the LSPA newsletter regarding the Superior Court decision.

##### **B. Report from screening team re: complaint 11C-03**

Ms. Read provided some background regarding this case. The Board had tabled making a decision on this complaint at the last two meetings because some members of the screening team (Ms. Batchelder, Mr. Siddique and Ms. Read) had not all been in attendance. Ms. Read stated that the members of the screening team were not ready to make a recommendation to the Committee whether or not to appoint a Complaint Review Team ("CRT") because they wanted feedback from the Committee regarding some issues. Ms. Read passed out copies of some data tables and site figures. These documents had been redacted and contained no identifying information regarding the LSP or the site at issue. The screening team members stated that the two issues regarding which they were seeking feedback were: 1) whether it was sufficient for the LSP to have relied on statements from his/her client that local water department officials had indicated that two wells on the site were irrigation wells; and 2) whether the LSP had adequately defined the nature and extent of contamination. Considering that questions remained regarding the LSP's actions on the site, the Committee members discussed whether a CRT should be formed. After some discussion, a motion was made and seconded to form a CRT. The motion passed with five in favor (Ms. Batchelder, Ms. Farnsworth, Mr. Henry, Ms. Listerneck, and Mr. Luhrs) to four opposed (Ms. Callahan, Mr. Guswa, Ms. Race and Mr. Siddique), and one abstention (Mr. Franklin). The screening team members (Ms. Batchelder, Mr. Siddique and Ms. Read) will act as the CRT for the complaint.

##### **C. Reassigning New Co-chairs**

Ms. Wood explained that another co-chair for the Professional Conduct Committee has not been selected to replace Debra Stake who left the Board more than one year ago. Robert Luhrs is the remaining co-chair. Ms. Wood stated it is sometimes helpful to have two co-chairs in the event one is unavailable and the staff needs approval for something. After some discussion, the consensus of the Committee was that Mr. Franklin would serve as a co-chair with Mr. Luhrs.

## **5. New Business**

### **A. Complaint 11C-04**

This complaint was filed by MassDEP and alleges, among other things, that the LSP failed to do the following at a hazardous waste site: to apply remedial additives in a manner consistent with the MCP and to adhere to MCP sampling requirements before and after the additives were used; to provide 72-hour notification for a Condition of Substantial Release Migration; to conduct Immediate Response Actions; to obtain approval prior to conducting a Release Abatement Measure; to present all required information in a Phase II assessment; and to eliminate or control each source of oil and/or hazardous material in accordance with the MCP. A motion was made and seconded to form a Complaint Review Team (CRT) to investigate the complaint. The motion passed unanimously. Mr. Guswa and Ms. Farnsworth were appointed to the CRT.

### **B. Complaint 12C-01**

Ms. Listernick was recused and left the room prior to any discussion of this complaint.

The complaint was signed by Beverly Coles-Roby, the Board's Executive Director. As was discussed at the Committee's last meeting in March, MassDEP sent a Notice of Noncompliance ("NON") to the Board staff and asked the Board to consider treating the NON as an addendum to a pending complaint. Considering that the investigation of the other complaint had been concluded and the new NON could not be added to it, the Board staff asked the Committee whether the members wanted the staff to treat the NON as a new complaint or wanted the staff to inform MassDEP staff that they would have to file a complaint if the Department wanted the Board to investigate the LSP's actions. Board staff did not present the NON to the Committee at last month's meeting. The Board directed the staff to review the NON to see if the violations described in it were within the Board's jurisdiction and, if so, to prepare a complaint. After some discussion of the complaint and response, a motion was made to form a screening team to review the complaint in more depth. Committee members discussed whether a screening team would be appropriate for this complaint. The consensus of the Committee was that a screening team had generally been used in situations where the Committee thought there was a reasonable likelihood that the complaint would be dismissed. A motion was made and seconded to appoint a CRT to investigate the complaint. The motion passed unanimously. Robert Luhrs and Debra Farnsworth were appointed to the Complaint Review Team.

Ms. Listernick returned to the room.

**6. Future Meetings**

The Committee next plans to meet on July 26 in New Bedford. A specific location in New Bedford is yet to be determined.

**7. Adjournment:** The meeting was adjourned at 2:55 p.m.